

STATE OF MICHIGAN  
COURT OF APPEALS

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STEPHANIE HIER,

Plaintiff-Appellant,

v

DOUGLAS J. MANAGEMENT L.L.C. and GINA  
POLCE,

Defendants-Appellees.

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UNPUBLISHED  
September 15, 2015

No. 321792  
Oakland Circuit Court  
LC No. 2013-134741-CD

Before: TALBOT, C.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

In this action alleging unlawful termination of employment, plaintiff appeals as of right an order granting defendants' motion for summary disposition. We affirm.

A trial court's grant of a motion for summary disposition pursuant to MCR 2.116(C)(7) is reviewed de novo to determine whether the moving party was entitled to judgment as a matter of law. *Blazer Foods, Inc v Restaurant Props, Inc*, 259 Mich App 241, 244-245; 673 NW2d 805 (2003). When reviewing such a motion, this Court accepts the well-pleaded allegations of the nonmoving party as true and construes them in that party's favor. *Id.* at 245. A motion for summary disposition pursuant to MCR 2.116(C)(7) "should be granted only if no factual development could provide a basis for recovery." *Xu v Gay*, 257 Mich App 263, 267; 668 NW2d 166 (2003). To the extent that this issue involves the interpretation of a contract, we review de novo. *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 141; 706 NW2d 471 (2005).

On appeal, plaintiff does not dispute that defendants' policy handbook given to her when she was hired provided for a limitations period for actions brought by an employee or that she was subject to this contractual provision. Specifically, the policy handbook required that an employee must commence "any claim, complaint, action or suit relating to their employment with the Company" within 182 days of the event "giving rise to the claim, complaint, action, or suit." Plaintiff also does not dispute that under Michigan law private parties are permitted to contract for any limitations period even if the contractual limitations period is less than the statutory limitations period. See *id.* at 141-142, 145.

Plaintiff's cause of action alleged wrongful termination for asserting her rights under the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.* Plaintiff was injured at

work on February 25, 2011, and received worker's compensation benefits. On July 18, 2011, plaintiff applied for mediation or a hearing with the workers' compensation agency, alleging that she had been returned to "reasonable" employment but defendants were not honoring her work restrictions, had written her up and disciplined her without good cause, and were trying to force her to quit in violation of MCL 418.301(13).<sup>1</sup> Her last day of work, when plaintiff alleges that she was subject to a retaliatory discharge, was July 26, 2011. Thus "the event" giving rise to plaintiff's claim, or the day on which plaintiff's claim for retaliatory discharge accrued, occurred on July 26, 2011, when she was allegedly terminated.

Plaintiff filed her circuit court action against defendants on June 26, 2013, which was more than 182 days after July 26, 2011. However, plaintiff contends that she complied with the contractual limitations period based upon the worker's compensation application she filed on July 18, 2011, which was eight days before the alleged termination of her employment on July 26, 2011, and within 182 days of her injury. Plaintiff argues that this claim put defendants on notice of her potential and actual claims. We disagree.

Plaintiff's argument fails for several reasons. As noted by the trial court, a worker's compensation claim for benefits is a distinct action from a civil lawsuit for retaliatory discharge. A claim for worker's compensation benefits is vested exclusively within the administrative enforcement scheme of the WDCA, MCL 418.101 *et seq.*, and an individual seeking to recover worker's compensation benefits for a workplace injury must do so under the WDCA. MCL 418.131(1). There is no private cause of action to recover such benefits. *Id.* There is no cause of action for retaliatory discharge under the WDCA because a private action for retaliation already existed in Michigan before MCL 418.301(11) (now MCL 418.301(13)) was enacted. See *Phillips v Butterball Farms Co, Inc*, 448 Mich 239, 244-245; 531 NW2d 144 (1995); *Dunbar v Dep't of Mental Health*, 197 Mich App 1, 7; 495 NW2d 152 (1992) (distinguishing between a claim for compensation for personal injury under the WDCA and a claim for retaliatory discharge and finding that the WDCA does not provide jurisdiction to the agency to hear a retaliatory discharge claim).

Further, plaintiff's application for mediation or hearing pertained to her claim for benefits that had become disputed. Although the application alleged retaliatory discipline, it could not have been for wrongful discharge because the alleged discharge had not occurred at the time plaintiff filed the application. See MCL 418.301(13). Therefore, the trial court correctly found that plaintiff's action against defendants was not saved by the July 18, 2011 claim.

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<sup>1</sup> MCL 418.301(13) provides:

A person shall not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under this act or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act.

Plaintiff also argues that she pleaded a valid prima facie case for retaliation in violation of the WDCA. Although defendants argued in their motion for summary disposition that plaintiff had failed to plead a prima facie case of retaliatory termination, the trial court did not rule on this argument, presumably because the court had determined that plaintiff's action was untimely. Because this Court finds that the trial court did not err in determining that plaintiff's complaint was untimely pursuant to the contractual limitations clause in the policy handbook, we also will not consider this issue. Accordingly, we hold that the trial court did not err in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7).

Affirmed. Defendants, the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Talbot  
/s/ Kurtis T. Wilder  
/s/ Karen M. Fort Hood